

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

SUCCESSION CAUSE NO. 118 OF 2013

IN THE MATTER OF ESTATE OF PAMELA ATIENO OGUTU - DECEASED

ALI AWADH ALI.....OBJECTOR/APPLICANT

VERSUS

MONICA ADHIAMBO OGUTU.....PETITIONER/RESPONDENT

RULING

1. Through a notice dated 13th July, 2016 the Objector, Ali Awadh Ali, objected to the confirmation of the grant issued to Monica Odhiambo Ogutu in respect to the estate of the deceased Pamela Atieno Ogutu. The objection is strongly opposed.
2. In brief, the Respondent/Petitioner, Monica Adhiambo Ogutu is a sister to the deceased Pamela Atieno Ogutu (the deceased). The deceased was married to the late Hansruedi Muller who was the registered owner of plot No. 2178 Original Number 2092/14. The Respondent seeks to inherit the said plot through these proceedings.
3. The Applicant/Objector opposes the confirmation of the grant on the ground that he is the registered owner of the plot the Respondent intends to inherit.
4. In this case, it is not necessary to beat about the bush. There is no evidence that the property in question was ever transferred from the registered owner Hansruedi Muller to the deceased herein. For that reason alone, the Respondent cannot inherit the property through the estate of the deceased herein.
5. The resolution of the dispute between the Objector and the Petitioner in respect to the property in question lies in the estate of the late Hansruedi Muller. I have restrained myself from commenting on the evidence adduced by each side since I believe that the matter still needs to be resolved substantively. I have seen a letter dated 28th April, 2016 in the file addressed to the Deputy Registrar of Mombasa High Court by the Petitioner indicating that there is a succession cause number 118 of 2014 in that court pertaining to the estate of the late Hansruedi Muller. The parties should pursue their dispute in that matter.
6. The outcome is that the Objector's case succeeds on a technicality to the extent that the property in question did not belong to the estate of the deceased Pamela Atieno Ogutu.
7. The Petitioner has applied for confirmation of the grant issued to her herein on 15th February, 2016. In her petition for letters of administration, the property in question was the only property of the estate of the deceased. In light of what I have stated above, there is therefore nothing else for which the grant can be confirmed. The solution is to revoke the grant under Section 76(e) of the Law of Succession Act for being useless and inoperative and mark this matter as closed as the parties move their dispute to another arena. That is my order.
8. As for costs, I find that the parties are yet to find a solution for their dispute. None of them should be burdened with costs. Each party will meet his/her costs in respect of this matter.

Dated, signed and delivered at Malindi this 24th day of January, 2019.

W. KORIR

JUDGE OF THE HIGH COURT